

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

OHIO CASUALTY INSURANCE COMPANY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:06-cv-977-MEF
)	
MANIFOLD CONSTRUCTION, LLC, et al.,)	
)	
Defendants.)	

**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO
COMPEL AND STATUS REPORT OF MEDIATION**

COME NOW the Defendants, Whittelsey Properties, Inc. and C.S. Whittelsey, IV (collectively referred to herein sometimes as "Whittelsey"), and by response in opposition to Plaintiff's motion to compel, state as follows:

1. On the 31st day of October, 2006, Plaintiff, Ohio Casualty Insurance Company (hereinafter "Ohio Casualty"), filed its complaint for declaratory judgment to determine the rights and obligations of Ohio Casualty under a policy of insurance it issued to Manifold Construction, LLC and Jack Manifold, co-defendants in the present case.

2. On the 25th day of July, 2007, Whittelsey filed their answer to Plaintiff's complaint. (Doc. #23). On the same day, Whittelsey served Plaintiff with requests for production.

3. On or about the 27th day of July, Plaintiff served all Defendants with interrogatories and requests for production. (Doc. #37-2).

4. On the 28th day of August, 2007, Whittelsey responded to Plaintiff's discovery by asserting numerous objections, and directing Plaintiff to the documents requested. (Doc. #37-3).

5. On the 28th day of August, 2007, Plaintiff filed its motion for extension of time to respond to Whittelsey's discovery requests. (Doc. #31). In support of its motion, Plaintiff alleged Whittelsey's discovery requests were overly broad and unduly burdensome; however, Whittelsey's request is limited to any and all documents associated with the underlying state court action. (Doc. #31-2).

6. Late in the afternoon of August 28, 2007, four days after responses were due, Whittelsey received Plaintiff's responses to Whittelsey's discovery requests. Plaintiff failed to produce any documents citing the pending underlying state court action as grounds for its objection.

7. On the 10th day of September, 2007, due to certain disputes arising over discovery, Whittelsey filed their motion to dismiss or, in the alternative, motion to stay proceedings or, in the second alternative, motion for protective order or, in the third alternative, motion to set discovery conference. (Doc. #34).

8. On the 13th day of September, 2007, this Honorable Court issued its order (Doc. #36) directing Plaintiff to respond to Whittelseys' motion "on or before September 20, 2007." (Doc. #36, ¶ 1).

9. On the 20th day of September, 2007, Plaintiff filed its motion to compel. (Doc. #37).

10. On the 20th day of September, 2007, the Honorable Terry F. Moorner, United States Magistrate Judge, issued an order (Doc. #38) directing Whittelsey to file a response to Plaintiff's motion to compel (Doc. #37) by September 27, 2007.

11. On the 21st day of September, 2007, Plaintiff filed its reply memorandum and memorandum in support of motion to compel. (Doc. #39).

12. On the 24th day of September, 2007, Whittelsey filed its reply brief. (Doc. #40).

13. On the 25th day of September, 2007, Plaintiff filed a response to Whittelsey's reply brief. (Doc. #41).

14. On the 26th day of September, 2007, this Honorable Court issued its order (Doc. #44) denying Whittelsey's motion to dismiss and stay of proceedings in the alternative, as the Court does not have an administrative docket. The remaining issues raised by Whittelsey's motion were referred to the Honorable Terry F. Moorer, United States Magistrate Judge.

15. Whittelsey previously attempted to resolve this discovery dispute without the assistance of the Court.

16. The parties engaged in mediation on the 2nd day of October, 2007.

17. On the 26th day of September, 2007, the Honorable Terry F. Moorer, United States Magistrate Judge, issued his order (Doc. # 45) directing the parties to inform the Court of the outcome of mediation and extended the time for Whittelsey to respond to Plaintiff's motion to compel (Doc. #37).

18. The parties recessed the above said mediation leaving the mediation open for thirty (30) days in an attempt to resolve all matters.

19. Although Plaintiff claims Whittelsey has offered to allow counsel for Plaintiff to inspect documents, nothing can be further from the truth. Whittelsey did not produce nor did it offer to produce any documents in response to Plaintiff's requests, instead Whittelsey stated numerous objections and directed Plaintiff to documents in the possession of Plaintiff and/or its agents. (Doc. #37-3). There is nothing to compel.

20. Meanwhile, Plaintiff is not willing to produce necessary documents while the state court action is pending. Therefore, this Honorable Court should issue a protective order to

suspend discovery until after the mediation of the underlying state court action or, in the alternative, set a discovery conference so that various issues raised by Plaintiff may be properly addressed.

WHEREFORE, Whittelsey prays this Honorable Court deny Plaintiff's motion to compel and will either (1) issue a protective order to suspend discovery until after the mediation of the underlying state court action has come to a close, i.e. after thirty (30) days; or (2) set a discovery conference so that various issues raised by Plaintiff's objections may be properly addressed.

Respectfully submitted this the 4th day of October, 2007.

WHITTEELSEY, WHITTEELSEY & POOLE, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document on the parties listed below electronically or by placing a copy of the same in the United States mail, postage prepaid, to their correct address on this the 27th day of September, 2007.

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